

TENTATIVE RULINGS for CIVIL LAW and MOTION

June 11, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: **All About Floors, Inc. v. John F. Otto, Inc.**
Case No. CV CV 08-1155

Hearing Date: **June 11, 2009** **Department Fifteen** **9:00 a.m.**

All About Floors, Inc.'s evidentiary objection is **SUSTAINED**.

John F. Otto, Inc. and Travelers Casualty and Surety Company of America's evidentiary objection numbers 1 (as to sentence 2 only), 4 (as to sentences 2-4 only), 5, and 7 are **SUSTAINED**. All other evidentiary objections by these defendants are **OVERRULED**.

The requests for judicial notice by the plaintiff and the defendants are **GRANTED**. (Evid. Code, § 452, subds. (c) and (d).)

John F. Otto, Inc. and Travelers Casualty and Surety Company of America's motion for summary judgment or, in the alternative, summary adjudication is **DENIED**. (Bus. & Prof., § 7031, subd. (e).) Triable issues of material fact about whether the plaintiff substantially complied with licensure requirements exist. (Defendant's Separate Statement of Undisputed Material Facts ("SSF") 2, 4, 8, 9 and 11; Plaintiff's SSF 1, 3, 5-11, 13-14 and 16.)

John F. Otto, Inc. and Travelers Casualty and Surety Company of America are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

TENTATIVE RULING

Case: **American Express Bank, FSB v. Raspa et al.**
Case No. CV CV 08-3257

Hearing Date: **June 11, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff American Express Bank FSB's unopposed motions to compel responses to form interrogatories and to deem admissions admitted and for sanctions is **GRANTED**. (Code Civ. Proc., §§ 2023.010 *et seq.*, 2030.290, subds. (b) & (c), and 2033.280, subds. (b) & (c); Cal. Rules of Court, rule 3.1348.) Plaintiff's requests for admissions, set one are deemed admitted.

Sam Raspa shall serve **verified** responses to plaintiff's form interrogatories, set one, without objections, to plaintiff by July 10, 2009. Sam Raspa shall also pay plaintiff \$490.00 in sanctions by July 10, 2009.

If no hearing is requested, this tentative ruling is effective immediately. Plaintiff shall serve a copy of the tentative ruling on Defendant on June 11, 2009. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as described herein, is required.

TENTATIVE RULING

Case: **FIA Card Services, N.A. v. Doyle**
Case No. CV G 09-338

Hearing Date: **June 11, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff FIA Card Services, N.A.'s unopposed motion for judgment on the pleadings is **GRANTED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., §§ 438 & 1033.) The court awards damages in the amount of \$21,833.12 plus costs in the amount of \$437.00. in favor of FIA Card Services, N.A. and against Lorna P. Doyle.

Plaintiff shall give the defendant notice of this ruling by no later than June 12, 2009, and file a proof of service showing such notice.

TENTATIVE RULING

Case: **Flores v. Ramirez**
Case No. CV CV 08-1979

Hearing Date: **June 11, 2009** **Department Fifteen** **9:00 a.m.**

Cross-defendant Linda Rodriguez' demurrer to the first amended cross-complaint ("FACC") is **OVERRULED**. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26.) The demurrer is based on *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118. The contract in that case had not been fully performed. Pacific Gas and Electric Company ("PG&E") sued Bear Stearns & Company for interfering with PG&E's contract with Placer County Water Agency ("Agency"). The Agency did not rescind, revoke or disavow the PG&E contract. Instead, the Agency demanded arbitration (and later sought a declaratory judgment) in order to resolve the question of whether it could terminate its contract with PG&E before contract-expiration date. In that context, the High Court held that inducing a party to a contract to seek a judicial determination does not constitute intentional interference with contractual relations.

On a demurrer, the Court must deem to be true all material facts properly pled. (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43.) The challenged pleading must be construed "liberally ... with a view to substantial justice between the parties." (Code Civ. Proc., § 452.)

Unlike *Pacific Gas & Electric Co.*, the alleged interference in this case is conduct causing the plaintiffs to actually disavow the validity of the 1991 agreement and to assert title to the property at issue. (FACC ¶ 6.) The parties agree that the plaintiffs can disavow the 1991 agreement, even though the agreement has been fully performed. The FACC does not allege that the cross-defendants interfered with the 1991 agreement by inducing the plaintiffs to bring a lawsuit. The FACC alleges all of the elements of an intentional interference cause of action.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Lehman v. Loman**
Case No. CV CV 07-379
Hearing: **June 11, 2009** **Department Fifteen** **9:00 a.m.**

Defendants' Motion to Enforce Settlement Agreement pursuant to Code of Civil Procedure section 664.6, is **GRANTED**. (Code Civ. Proc., § 664.6; Mandatory Settlement Conference Minute Order dated July 15, 2008; Declarations of Linda J. Linton and Henry Williams.) The exact terms of the settlement entered orally before the Court were not included in the minute order. The execution of a release agreement was not part of the settlement agreement stated orally before the Court. (Declaration of Henry Williams ¶¶ 2-11; Declaration of Linda J. Linton, ¶ 9.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Mocerin v. Spellmeyer**
Case No. CV CV 08-3232
Hearing Date: **June 11, 2009** **Department Fifteen** **9:00 a.m.**

The parties shall comply with the requirements governing the time for filing and serving papers. The Court will not consider late-filed papers by any party in the future.

Plaintiff's request for judicial notice is **DENIED**.

The demurrer to the second through fifth causes of action is **SUSTAINED WITHOUT LEAVE TO AMEND**. The complaint is based on the defendant's making an allegedly false report to law enforcement officials. (Complaint ¶¶ 6-8, 11-13, 16-17, 20-21, and 25.) The act of reporting an alleged crime to the police is privileged, even if the report is made in bad faith. (Civ. Code, § 47, subd. (b); *Cabesuela v. Browning-Ferris Industries of Cal., Inc.* (1998) 68 Cal.App.4th 101, 112; *Cote v. Henderson* (1990) 218 Cal.App.3d 796, 806.) Even if the Court were to take judicial notice of the documents attached to the plaintiff's request for judicial notice, the plaintiff's legal contention is unsupported by the law. Because the demurrer to the

fifth cause of action is sustained without leave to amend, it is not necessary for the Court to rule on the demurrer to the same cause of action based on uncertainty.

The demurrer to the first cause of action is **OVERRULED**. Plaintiff alleges that the criminal complaint against him was dismissed. (Complaint ¶ 8.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.